IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.2469 OF 2005

Shri Shivaji Dajiram Dhekale .. ..Petitioner

Versus

Smt.Chandbi Mohammad Hussain .. ..Respondent

Mr.S.D.Patil for petitioner

Mr.Niyas Ahmed for respondent

CORAM : P.V.KAKADE, J.

DATE : 26TH APRIL, 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioner-defendant has impugned the order passed by the lower appellate court dated 15.9.2994 dismissing the appeal and confirming the judgment and order passed by trial court decreeing the plaintiff’s

suit for eviction of the petitioner from the suit premises.

3. The trial court after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiff had proved that the defendant had committed wilful default by not paying rent and permitted increases for more than six months. It was further held that the plaintiff had proved that he required the suit premises reasonably and bonafide for his own use and occupation. Issue of greater hardship was also decided in favour of the plaintiff and as such the plaintiff was found entitled for decree of possession against the defendant.

. The appeal was carried to the appellate court, who after hearing both the parties came to the conclusion that the reasoning adopted and findings recorded by the trial court were just, legal and proper and therefore, dismissed the appeal. Hence the present petition.

4. At the outset, it may be noted that the learned counsel for the petitioner sought to make grievance that

there was confusion with regard to the pleading wherein the suit premises was located. According to the petitioner, he was residing in one Babaji Chawl, whereas the evidence on record was showing that notice was issued on the premises in one Mainabai Chawl. However, both the courts have concluded that both the chawls are located aside by side and owned by one Abbas Babaji Shaikh, and therefore, the ration card of the petitioner which mentions the address at Babaji Chawl, could not be stated to be conclusive proof of the fact that the defendant was staying in Babaji Chawl. Be as it may, the evidence recorded by lower court was sufficient to show that the notice of demand of the rent was properly served on the petitioner, which could be seen from the documents at Exh.21 as well as Exh.22, which showed the endorsement as "Refused" made by the petitioner. In this regard, the findings recorded by both the courts below are seen to be reasonable and acceptable and therefore, would brook no interference. I am also satisfied by the reasoning adopted by both the courts below on the question of bonafide requirement and question of greater hardship and therefore, and hold that the concurrent findings recorded by both the courts appear to be legal and proper and therefore, would brook

no interference. Certainly this is not a matter, which would require interference by this Court under its power under Article 227 of the Constitution of India and as such the petition is devoid of any merits and stands dismissed with no order as to costs.

4. At this stage the learned counsel for the petitioner sought some time to vacate the suit premises. In view of the facts and circumstances the decree for possession shall not be executed for the period of three months from the date of this order. The petitioner and all adult members of his family shall execute an Undertaking to that effect to this court with condition that they shall not create any third party interest in the suit premises and shall continue to pay the agreed rent during the period of their occupancy in the suit premises. The undertaking to be furnished within two weeks from the date of this order.